

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Field Fumigant Emission Limits
DPR Regulation No. 08-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6452.2 of Title 3, California Code of Regulations. This proposed action would revise the total pesticide (fumigant and nonfumigant) volatile organic compound (VOC) emissions benchmarks in the Sacramento Metro, South Coast, Southeast Desert, and Ventura ozone nonattainment areas (NAAs), and allow a phase-in implementation of the VOC fumigant emissions reduction in the Ventura ozone NAA between 2008 and 2012.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on March 25, 2008. Comments regarding this proposed action may also be transmitted via e-mail <dpr08001@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing has been scheduled for the time and place stated below to receive oral comments regarding the proposed regulatory changes.¹

DATE: March 24, 2008
TIME: 5:00 p.m.
PLACE: Courtyard Marriott Oxnard Ventura
Santa Monica Room
600 East Esplanade Drive
Oxnard, California 93036

A DPR representative will preside at the hearing. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 4:30 to 5:00 p.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after the registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State and federal law mandates that DPR protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. VOCs can contribute to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. The federal Clean Air Act requires each state to submit a State Implementation Plan (SIP) for achieving and maintaining federal ambient air quality standards for ozone. An ozone NAA is a geographical region in California that does not meet either federal or state ambient air quality standards. The U.S. Environmental Protection Agency designates NAAs in Title 40, Code of Federal Regulations section 81.305. In 1994, California's Air Resources Board and DPR developed a plan to reduce pesticidal sources of VOCs in five NAAs--Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura--as part of the California SIP to meet the one-hour ozone standard.

In 2006, a federal court found that DPR had violated this pesticide element of the 1994 SIP and ordered DPR to adopt regulations by January 26, 2008, to achieve a 20 percent reduction of pesticide VOC emissions from 1991 levels in the five NAAs. (Court Order concerning remedies, No. Civ. S-04-822 [E.D. Cal. filed April 6, 2006], enforcing *El Comite Para el Bienestar de Earlimart v. Helliker*, 416 F. Supp. 2d 912 [E.D. Cal. 2006].) The regulations adopted on January 25, 2008, comply with the court order. Those regulations, in part, require the Director to establish field fumigant VOC emission limits for NAAs that exceed 80 percent of the emissions benchmarks to make sure those benchmarks are not exceeded. The benchmarks are based on each NAA's emissions in 1991, and are set 20 percent below that level.

DPR proposes to amend section 6452.2 to revise the total pesticide (fumigant and nonfumigant) VOC emissions benchmarks in the Sacramento Metro, South Coast, Southeast Desert, and Ventura ozone NAAs. As ordered by the lower court, the regulation used VOC emission estimates for 1991 as the base year to determine the benchmarks described in section 6452.2. However, DPR believes that to use 1990 emissions as the baseline is a more accurate reflection of, and consistent with, our obligation under the 1994 SIP. Therefore, DPR proposes to amend section 6452.2 by using the emissions data from 1990 instead of 1991 to establish the benchmarks.

Also, DPR proposes to allow a phase-in implementation of the final emissions target in Ventura between 2008 and 2012. The proposed phase-in allows regulated entities more time and flexibility to plan and develop strategies to meet the emission limits without necessarily taking land out of agricultural production, and is consistent with the California Air Resources Board's planning for the eight-hour ozone standard.

The proposed amendments to section 6452.2 are inconsistent with the court order, which is currently on appeal. DPR will only adopt this proposal when and if it is consistent with its legal obligations.

The proposed regulatory action pertains to the following seven fumigant active ingredients. Common brand names and/or alternative chemical names are given in parentheses as an aid to identification--methyl bromide, 1,3-Dichloropropene (Telone, Inline), chloropicrin, metam-sodium (Vapam, Sectagon), Potassium N-methyldithiocarbamate (also known as metam-potassium [K-Pam]), dazomet (Basamid), and sodium tetrathiocarbonate (Enzone).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation would have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal reduces the adverse economic impact from current regulation. The revised overall emission limit for the Ventura NAA in 2012 will allow for more acreage to be treated.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impact that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action. As discussed above, the revised overall benchmark emission limit in the Ventura NAA of 1,110,000 pounds in 2012 equates to a 14 percent increase in acreage. Therefore, the estimate of acreage loss from current

regulation decreases by 1,100 acres, resulting in a cost savings. The estimated value of the crops grown on those 1,100 fumigated acres is \$9.2 million.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 12976, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 14006, and 14102.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

Randy Segawa, Environmental Program Manager
Environmental Monitoring Branch
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.5(a)(19) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date